

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIO NISVIS,

Plaintiff,

- against -

SING SING SUPERINTENDENT PHILIP D.
HEATH, NURSE ADMINISTRATOR
BARBARA FURCO, PHYSICIAN'S
ASSISTANT KWAN, and NURSE SUZETTE
CAMPER,

Defendants.

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: March 13, 2014

ORDER

11 Civ. 2004 (PGG) (GWG)

PAUL G. GARDEPHE, U.S.D.J.:

Pro se Plaintiff Mario Nisvis brings this action pursuant to 42 U.S.C. § 1983, alleging that Defendants showed deliberate indifference to his medical needs while he was incarcerated at Sing Sing Correctional Facility. (Am. Cmplt. (Dkt. No. 23) at ¶ 3) On May 6, 2013, Defendants moved to dismiss under Fed. R. Civ. P. 12(b)(6), (Dkt. No. 26), and this Court referred the motion to Magistrate Judge Gabriel W. Gorenstein for a Report and Recommendation ("R & R") on July 25, 2013. (Dkt. No. 29) On September 5, 2013, Judge Gorenstein issued a 12-page R & R recommending that this Court grant Defendants' motion to dismiss and provide Plaintiff leave to file a second amended complaint. (Dkt. No. 30)

The R & R was sent to the parties on September 5, 2013. According to 28 U.S.C. § 636(b)(1)(C), "[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations."¹ 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. Rule 72(b)(2) (stating that "[w]ithin 14 days after being

¹ The R & R recites the requirement that parties must file objections within fourteen days of service, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, and the consequences for failure to timely object. (Dkt. No. 30 at 11-12)

served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations”). To date, this Court has received no objections to the R & R.

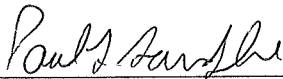
In evaluating a Magistrate Judge’s R & R, a district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). When a timely objection has been made to the Magistrate Judge’s recommendations, “[the district court judge] shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); Razo v. Astrue, No. 04 Civ. 1348(PAC)(DF), 2008 WL 2971670, at *3 (S.D.N.Y. July 31, 2008) (citing Pizarro v. Bartlett, 776 F.Supp. 815, 817 (S.D.N.Y.1991)). However, “[f]or uncontested portions of the R & R, the court need only review the face of the record for clear error.” Razo, 2008 WL 2971670, at *3 (citing Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)). Because no timely objections have been filed, this Court will review the R & R for clear error.

Having conducted a review of the R & R, the Court finds that the Report is not clearly erroneous and, in fact, is in conformity with the law. Accordingly, the Report’s recommendations are adopted in their entirety: Defendants’ motion to dismiss is granted, and Plaintiff is given leave to file a second amended complaint addressing the defects discussed in the R & R. Plaintiff must file any amended complaint by **April 14, 2014**.

The Clerk of the Court is directed to terminate the motion. (Dkt. No. 26) The Clerk of the Court is further directed to mail a copy of this Order to pro se Plaintiff Mario Nisvis, 06-A-5855, Fishkill Correctional Facility, 18 Strack Drive, Beacon, New York 12508-0307.

Dated: New York, New York
March 13, 2014

SO ORDERED.



Paul G. Gardephe
United States District Judge